THE CONSTITUTIONAL POSITION OF THE GERMAN EMPEROR.

From the standpoint of public law the position of the Emperor, as it has existed in the modern German Empire since January 18, 1871, differs wholly from that of the other European Emperors in Austria and Russia. Yet in the consciousness of the people such distinctions of formal law have little importance.

The imperial office was created after the war of 1870, when the German states and people had been moulded into national unity in the present German Empire. The North German Confederation, founded after the war of 1866, was without such an office. The re-establishment of the imperial rank and dignity was due to the initiative of King Louis of Bavaria, who had been urged to make the proposal by the German princes and free cities, after the negotiations for the entrance of the South German States into the Confederation had been happily concluded toward the end of 1870. While the formal motion came from the Bavarian monarch, the prime mover in the enterprise was the Grand Duke Frederick of Baden. It was reluctantly and with hesitation that King William of Prussia brought himself to transform the Prussian monarchy with its ancient and glorious traditions into this new German Empire, and his great Chancellor was dubious of the outcome. The Crown Prince, later the Emperor Frederick, was on the contrary an enthusiastic advocate of the imperial idea. In his idealism with its romantic leanings he saw in the new imperial dignity the splendor and magnificence of the old German Empire as it had endured a thousand years from the time of Charles the Great. Not, however, that he lost sight of the fact that from the standpoint of public law the new empire would and must be infinitely removed from the old Empire.

Yet the tradition of the old Empire proved to be a powerful factor in the erection of the new, not so much among the northern as the southern and western Germans, where the imperial idea was still a living force as a memory from older times, and where in the intermediate and small states a tenacious clinging to the remembrance of a more glorious past was felt in all patriotic circles to be the only consolation for the governmental disruption and division of what was then the present.

Even in the movement for German unity in the stormy year 1848, the rallying point of the reforms demanded was the imperial project, despite the difficulties which then beset such a program. Despite the republican sympathies of the time, despite the forceful antagonism of Austria, despite the slight inclination, or rather the strong disinclination which prevailed beyond the Prussian boundaries toward Frederick William IV.—despite all this the Prussian King was elected German Emperor, by the representatives of the German people assembled in the Church of St. Paul at Frankfurt—a proof of how deeply the imperial idea was rooted in the minds of the German people, and how much the realization of this idea was deemed the central point in the projected reorganization of the German state.

Frederick William IV. declined the imperial crown offered him by a deputation of the Frankfurt Parliament. In subsequent letters to his intimate friend, Bunsen, the king spoke of this decision, and we are thus fully informed in regard to his motives. He could not, he said in effect, allow himself to become through this iron ring the slave of the revolution; the Parliament had no crown to offer; but should the united council of the German princes and the German people truly and legally convened offer him the honored crown of the German Emperor he should answer as a man to whom the highest earthly honor had been proffered.

The ideals of popular sovereignty and the ideals of the

Prussian monarchy were confronted in their historic contrast, and Frederick William IV. held steadfastly to the ideals of the monarchy. Leopold von Ranke has justly characterized this royal decision as the most significant and the most fruitful public action of the king.

The united council of the German princes truly and legally convened and with the enthusiastic approval of the people did call King William to the Imperial throne, and thus occurred January 18, 1871, at Versailles, the imperial proclamation, in which the Emperor pledged himself and his descendants to be for all time the increaser of the realm —*semper augustus*—not in warlike conquests, but in the achievements of peace and civilization. This is the preliminary history of the imperial crown in the modern German Empire.

II.

In the modern German Empire the imperial office is not monarchical, as it is in Austria or in Russia, or as it was formally and legally at least in the Holy Roman Empire of the German nation until its end. In order to ascertain what the imperial office really is from the standpoint of public law, we must first determine what it is not, and this in turn requires the discussion of the theoretical basis of the Empire itself.

Jurists still debate whether in theory the German Empire is a federal state or a confederation. The majority of writers, and especially those of the highest reputation, such as Laband, Hänel and G. Meyer, declare the Empire to be a federal state, while a Bavarian school led by the acute and able Seydel, include the Empire in the class of confederations; although among the former group of writers there still remain many and important points of dispute in matters of detail.

The decisive considerations are as follows: Until the fourteenth of June, 1866, the German states were under the

old German Confederation established by the Vienna Congress, of which a Bavarian statesman justly said in 1848 that it was a derision to the foreigner and a vexation to the German. This union was a confederation based upon the foundation of the sovereignty of the individual states, and established to maintain it. Its place in the world's history was characterized by complete futility and weakness at home as well as abroad. All attempts and proposals for reform from 1815 to 1866 which found any sympathy among the people were directed not to questions of detail, but to a reform of the whole underlying basis, the abolition of the confederation principle.*

When, after the war of 1866, the path was cleared for the reform of the German state, two leading principles appeared clearly: first the supremacy of Prussia with the exclusion of Austria from the German state, and, second, the welding of the southern and middle German states in a more compact form of statehood, *i. e.*, the principle of the federal state. The latter was indeed not directly expressed in the treaties of August 18th and 21st, 1866, for the establishment of the North German Confederation, which used only the general expression, Union. But that this Union should be a state in the intention of those who formed it, follows conclusively from the historical development, and from the contents of the constitution of the Union, which is decisive for the legal point of view.

It was in this connection immaterial whether the expression "Act of Union" or the Federal Constitution was used, and yet in the latter phrase, which occurs in the August treaty, there lies a distinct suggestion.

The nature of the state created by the North German Confederation is demonstrated conclusively by the constitutional regulation of the authority of the Confederation toward its members. This assumes two aspects from the

*For detailed proof see Hänel "*Staats recht*" II, and Zorn "*Reich und Reichs verfassung*."

public law standpoint. First in matters of detail, in the reservation to the Confederation of the regulation of military, naval, consular affairs, posts and telegraphs, coinage, weights and measures, customs duties and indirect taxes, control of industry and kindred matters.*

In all these directions the Confederation exercised the right of legislation,† binding upon its members further the right of administration whether directly in its own name or indirectly through the states under its supervision and control, and finally it had authority to enforce its purpose in extreme cases with the right of "execution" against the members even to the point of sequestration of a recalcitrant government.‡

It is unnecessary to examine whether a government so amply provided with important public duties and the power to crush any opposition to its measures can properly be classed in the legal category of confederations. The question is superfluous in view of another aspect of the public law thus enacted.

For the Confederation was given by the constitution the right of enlarging the scope of its authority by the legal means of constitutional amendment, in other words, to take upon itself at its discretion any of those public functions which in the limitation of power between the central authority and the members of the Confederation were in the first instance to remain in the domain of the latter. A momentous application of this right took place in the transfer from the individual states to the "Confederation" of the entire legislation upon civil law.§

The admission of this principle of public law in the constitution was not attained without opposition and a severe struggle. The original draft of the constitution as proposed

*North German Confederation Constitution, Art. 4. Imperial Constitution, Art. 4.

†*Ibid.*, Art. 2, 5.

‡*Ibid.*, Art. 19.

§Law of December 20, 1873, for the amendment of the Imperial Constitution.

by Prussia and accepted by the other middle and north German states contained nothing upon this point. In the discussions in the so-called constituting Reichstag, a motion was made by the well-known publicist, Zachariae, to expressly exclude and forbid any enlargement of the powers of the proposed government. In the debate which ensued a counter proposition was made (Miquel, Lasker) to expressly permit constitutional amendments without restriction of their scope, and thus if desired an enlargement of the federal powers.

The latter proposition was adopted and was embodied in Article 78, section 1, of the constitution. The transformation of the North German Confederation into the German Empire made no change in this respect. Bavaria indeed sought to raise an opposition to this provision, but the effort was fruitless, and Bavaria had to content itself with the effort to extend as far as possible the field of its "reserved rights."

The kernel of the constitutional organization of the Empire is therefore that the Empire can constitutionally enlarge its powers without limitation—apart from the "reserved rights"—and that the individual states must obey an imperial law of this nature like any other imperial law. Thus the sovereignty and nature of the German Imperial State is established by evidence which admits not the slightest doubt. Every deduction which contests this point lacks logical foundation.

But just as certain as the political nature of the German Empire is the fact that the Empire is not a unitary state or a monarchy.

III.

The German state, which by the Acts of July 1, 1867, and January 1, 1871, took its place in the world's history, did not intend and did not wish to be monarchical—a state indeed, but a federal state was to be erected and was created. The other German states were neither absorbed in

Prussia, nor were they by the establishment a state comprising all Germany abolished. The theoretical view of Otto Mejer that the North German Confederation and the German Empire represented nothing but an enlargement of the Prussian state by the incorporation of the twenty-four other single states, has found no approval among jurists, as it finds support neither in the historical development nor in the text of the constitution. Such constitutional interpretation may favor the political wishes of some persons, but they lack wholly any foundation in jurisprudence.

It was rather the purpose to create a comprehensive political organism which, based upon hitherto unconnected individual states, should bring them into a constitutional connection. This purpose was realized. The legal notion involved is familiar to jurists in private law: a number of individuals form a corporation which supersedes the individual so far as the corporation reaches. In the field of corporate activity the individual has no legal existence, being absorbed in the corporation, but in all spheres of life which lie beyond the corporation the legal existence of the individual continues.

Cautious as one must ever be in the application of principles of private law to public law, yet we all feel grateful for a loan from the rich capital which the science of private law has accumulated in the more than thousand years of its existence. The concept of a corporation explains much in the constitutional formation of the German Empire, but does not explain everything. A number of states were up to that time legally unconnected, independent, sovereign; they now enter, as in a corporation, a combination which has the character of a unit, so that the single members become legally dependent, while the unit only is independent and sovereign.

In the main, though not in all points, the legal writers, with the exception of Seydel, are united in this legal interpretation of the power of the German Empire. The Empire

is the legal unit of the twenty-five single states combined in the Empire; the imperial government is the unit of the twenty-five allied governments. It is juristically correct therefore to say that the German princes are the allies of the King of Prussia, but it is juristically wholly incorrect to say that the German princes are the allies of the Emperor. Hence the German Empire, though a state, is not a unitary state, but a federal state; it is not a monarchy, but a union of monarchies; the bearer of the sovereignty is not the Emperor, but the corporative unit of the former bearers of the individual state sovereignties, the "allied governments" as whose representative the Bundesrath figures in the organization of the Empire, and to the Bundesrath belongs presumptively the exercise of sovereign rights.

IV.

Our discussion as it relates to the Emperor has thus far been negative, and it is now our purpose to face the positive question: what is in public law and according to the imperial constitution the nature of the imperial office?

The historical course of events in the origin of the office has been sketched, but it offers nothing for the juristic interpretation. We can in fact assert that the imperial office in the hands of Prussia is an essential part of the historical conclusion of the process of building up the German state, both in so far as Austria was definitely excluded from any part in the matter, and in so far as the German imperial crown was made hereditary with the kings of Prussia.

It is not entirely correct to say in this connection that the imperial office is the legal expression of the hegemony of Prussia in the German governmental relations, for only a portion of the hegemony of Prussia appears in the imperial office. Other evidences of Prussian supremacy which have no connection with the Emperor appear in the veto of Prussia, even should it stand alone with seventeen votes in

the Bundesrath against the forty-one votes of the other members, against any amendment * of the imperial constitution, and against military, naval,† customs duties or indirect taxation ‡ legislation, and further in the chairmanship of Prussia in all committees of the Bundesrath (with a single exception). §

By the canons of formal jurisprudence the imperial office involves nothing more nor less than a number of single rights in the Empire, constitutionally conferred upon the King of Prussia. All attempts to bind them together into a comprehensive and unified concept of public law have been fruitless, and must always be so in view of the federal basis of the Empire. This is especially true of the effort of Laband, with recourse to notions borrowed from commercial law, to attribute to the Emperor the "government" of the Empire, for in principle the government of the Empire belongs to the Bundesrath as the representative of the sovereignty of the allied governments combined juristically as a unit, and moreover, the government is in fact exercised by the Bundesrath.

And yet from these *disjecta membra*, legally considered, of the imperial office, there has grown up in the conviction of the German people, and still more in foreign nations, an effective unit which has in the theory of the matter, especially abroad, wholly displaced the King of Prussia. We see here how insignificant in national affairs are the canons of formal jurisprudence and even the letter of the constitution in face of the supreme power of popular convictions. The inspiring force of the world's history and the magnitude of his actual power have given the Emperor a position wholly different from what was legally intended, and placed him entirely on a par with monarchical Emperors.

* Imperial Constitution, Art. 78, § 1.
† *Ibid.*, Art. 5, § 2.
‡ *Ibid.*, Art. 37.
§ *Ibid.*, Art. 8, § 2.

To this result indeed two aspects of German law, one drawn from public law, the other from penal law, have contributed. The imperial office is not an inefficient elective dignity, but a strong hereditary power, while the Emperor has in the entire Empire the protection of the penal law which a monarch enjoys. In both these points the organization of the Empire is purely monarchical. The German imperial crown is hereditary with the crown of Prussia, that is, with the House of Hohenzollern,* according to the principles of the Prussian constitution and dynastic laws of Hohenzollern, which provide for succession in the direct male line with the right of primogeniture.† Legal writers are fully agreed that not only is the Prussian sovereign always the German Empire, but that a regent exercising the Prussian royal power in accordance with the Prussian constitution would be entitled to exercise the duties of the imperial office.‡ Thus the hereditary king of Prussia has been made hereditary Emperor. An emperor could only be lacking in the event of the disappearance of all members of the House of Hohenzollern capable of inheriting the Prussian Kingdom, and it would then be the duty of Prussian Parliament to provide by election, and by a single act for the succession in the Prussian Kingdom and the German Empire.§ The title "imperial" is expressly accorded only to the Prussian Crown Prince, and therefore denied to other princes of the royal house. For the succession to the imperial throne there is absolutely no other law than the definite laws of the Prussian succession. The confusion of an election of an Emperor cannot disturb the peace and unity of the Empire.

In the same way the monarchical principle has victoriously overcome in the penal code the artificial legal construction of the imperial office. An insult to the Emperor is,

* Imperial Constitution, Art. 11, § 1.
† Prussian Constitution, Arts. 53, 54.
‡ *Ibid.*, Arts. 56–58.
§ *Ibid.*, Art. 57.

in every part of the German Empire, an act of *lese-majeste*,* while in all parts of the Empire an attempt against the life of the Emperor is high treason against the state in the person of its ruler.†

In a third point the monarchical principle has instinctively displaced the federal principle of the constitution. Constitutional theory and fundamental laws based upon it, have justly attached great importance to the fact that parliament is called together by the ruler of the state, and can never assemble of its own initiative, that the monarch alone has the right to inaugurate the labors of the parliament and to pronounce its adjournment, that finally the monarch has the right to prorogue Parliament and in extreme cases to dissolve it.‡ This supremacy of the throne over Parliament is justly regarded as a cardinal point in the monarchical principle. Nor is it affected by the circumstance that this supremacy is only formal and subject to certain limitations by positive provisions.

These powers of the Prussian constitution drawn from the monarchical principle are conferred by the Imperial constitution on the Emperor § and not the Bundesrath. This is a significant grant of monarchical attributes to the German Emperor, which directly abolishes the federal principle in denying all these rights of supreme power, with exception of the right of dissolution to the Bundesrath || and giving them to the Emperor. In so far as these matters are concerned the Bundesrath does not formally appear as the representative of sovereignty, but as the upper house of Parliament, which in principle it is not. These provisions have long since been practically of little moment, since the enormous development of public activity in the Empire has made the Bundesrath a permanent government council that is

* Imperial penal code, §§ 94, 95.
† *Ibid.*, § 80 ff.
‡ Cf. Prussian Constitution, Arts. 51, 52, 76, 77.
§ Imperial Constitution, Arts. 12, 13, 14, 24, 25, 26.
|| *Ibid.*, Art. 12.

neither "called" nor "opened" nor "adjourned" nor "prorogued," but simply takes a short vacation from its labors in the height of summer. Yet these provisions of the constitution have in two aspects the highest significance, first in the attribution to the Emperor through positive provisions of monarchical rights of the highest order, and then in extreme cases, which God forbid, in that the constitutional activity of the Bundesrath legally depends upon the Emperor and can be terminated by him legally at any time.

A fourth point finally in which the constitution ascribes monarchical rights to the Emperor in principle—though here again with restrictions in favor of the Bundesrath—is in the appointment of officials. In a monarchical state all officials, whether high or low, whether administrative or judicial, whether civil or military, are simply the assistants of the monarch, in the eyes of the public law a part of the monarch as the source of all power in the state; this principle finds formal expression in the appointment of the officials by the ruler.* The "first servant of the state," as Frederick the Great called himself, selects the assistants requisite for the state's service; and upon this principle rests the organization which Frederick William I., the creator of the Prussian bureaucracy, gave in such a masterly fashion to the official service.

This monarchical attribute is also conferred by the Imperial Constitution upon the Emperor. The Emperor appoints in the first instance the first official of the realm, the Imperial Chancellor.† As such the chancellor is purely an imperial official. The union in one person of the offices of chancellor and Prussian Prime Minister is not prescribed by the Imperial Constitution and is not legally essential. The twice attempted separation of the offices (1873, Bismarck and Roon; 1892, Caprivi and Eulenberg) has, however, demonstrated that what is legally permissible

* Prussian Constitution, Art. 47.
† Imperial Constitution, Art 15.

is not actually possible. Neither in the Empire nor in Prussia can the intended order of things be maintained under such a separation. The Prussian Prime Minister can no more succeed without the great authority of chancellor than the latter can without the real power of the Prussian Prime Minister. Here again we see how formal jurisprudence and even constitutional provisions lose their force in face of the constraining necessities of national life, or at least fail to do justice to the latter. Dynamically the like law for the identity of the chancellor and the Prussian Prime Minister prevails as for the identity of the imperial power and the Prussian Kingdom, though the former is not, like the latter, formally expressed in the constitution.

The office of Imperial Chancellor gained its content from the giant personality of the first incumbent; this great inheritance has passed to his successors, whose duty to the German people and the world it is to maintain it.

Below the Imperial Chancellor are a series of heads of departments for the administrative duties of the empire, known in the law by the colorless designation of "representatives of the chancellor," in official language as secretaries of state. These offices are not prescribed in the constitution, but are based on a special law of March 17, 1878. The incumbents are appointed by the Emperor without any co-operation of the Bundesrath. They are subordinate to the chancellor inasmuch as the latter can interfere at any time in any department, taking the initiative or supplementing its activities; they are coequal with the chancellor inasmuch as they conduct the current affairs of the departments entrusted to them and have the right conferred by the constitution on the chancellor only of countersigning imperial decrees with the parliamentary ministerial responsibility which this involves. The following branches of the administration have been organized in this form: Foreign affairs (*Auswärtiges Amt*), finance (*Reichsschatzamt*), posts and telegraphs (*Reichspostamt*),

railroads (*Reichsamt für die Verwaltung der Reichseisenbahnen*), navy (*Reichsmarineamt*), justice (*Reichsjustizamt*), internal affairs (*Reichsamt des Innern*). In matters of detail there are great differences among the various departments, which need not be discussed here; complete ministerial responsibility exists only for the departments of foreign affairs, the navy, the post office and perhaps finance. A quasi-ministerial position belongs to the still embryonic colonial office. An imperial ministry of war does not exist, while the administration of Alsace and Lorraine is in form entirely separated from the specific administration of the Empire, the governor there being a special Imperial Chancellor, or even more, for Alsace and Lorraine.

The position in public law of these superior imperial offices and their incumbents is thus substantially the same as in England, from whose usage their designations have been borrowed.

The question of the organization of the imperial ministries led in 1884 to an important state action of the "allied governments" toward the Reichstag. The declaration thus made by the "allied governments" now figures as the chief argument for the "confederation theory" of Seydel and his school. This declaration was to the effect that constitutional ministries in the Empire as then proposed in the program of a political party, could not be conceded, because they contradicted the "federal treaties" which the allied governments were firmly resolved to maintain. It need not be discussed how far such a declaration can be utilized juristically for a confederation theory in view of the constitution itself, nor how far such a declaration was politically necessary to combat partisan demands or aggressions of Parliament. In so far as the legal organization of the central offices of the Empire is concerned the declaration has little value. For whether they should be established on the basis of a council with independence of the departments or whether they should be subject to a single directing will, is

after all only a question of organization; the legal character of constitutional ministries cannot therefore be denied the superior imperial offices. Both in law and in fact the Empire has a complete ministerial system with responsible secretaries of state under the guidance of a prime minister, the Imperial Chancellor.

In each of the seven responsible offices of the Empire there is a more or less highly developed hierarchy of offices with the necessary officials appointed by the Emperor and therefore "imperial" officials.*

V.

In so far as the material rights of the supreme ruler are concerned these belong to the Emperor in so far as the constitution by positive enactment gives him a claim to them. In part these rights are such as rest upon no considerations of legal principle: as when the constitution makes the Emperor head of the system of posts and telegraphs,† or authorizes him to exercise through commissions the supervision of customs duties.‡ The executive power of the Emperor in Alsace and Lorraine in the name of the allied governments § and analogously in the German protectorates‖ belong in the same class.

On the other hand, the significance of a principle must be assigned to the constitutional provision which places the care of the international relations of the Empire with foreign states in the hands of the Emperor.¶ Hence the entire diplomatic corps of foreign nations in Berlin is accredited to the Emperor and the Empire, while imperial ambassadors, ministers, etc., represent the German Empire throughout the world. The former Prussian law governing

* Imperial Constitution, Art 18.
† *Ibid.*, Art. 50.
‡ *Ibid.*, Art. 36.
§ Law of June 9, 1871.
‖ Law of April 17, 1866.
¶ Imperial Constitution, Art. 11, § 1.

foreign representation, with the single exception of a Prussian minister at the Papal Court, has been abolished in that of the Empire, while the middle states still exercise in narrow limits the rights of foreign representation, both sending and receiving representatives. In like manner the consular service throughout the world as well as the recognition of foreign consuls in Germany is an affair of the Empire, and indeed German consuls abroad are exclusively imperial consuls without any modification in favor of the individual states.* The conclusion of treaties with foreign states in so far as the competence of the Empire extends take place through the Emperor, in other cases through the single states subject to the limitations of the constitutional principle.†

The rights of the Emperor in the legislative functions of the Empire are slight. The factors are here Bundesrath and Reichstag.‡ These two bodies determine legislation, while the Bundesrath as the representative of sovereignty, gives sanction to the laws of the Empire. To the Emperor the constitution assigns as respects legislation but two duties: he has to transmit to the Reichstag the projects of law according to the resolutions of the Bundesrath,§ without enjoying any independent right of action in regard to these resolutions, and he has to publish and proclaim the laws.‖ The Emperor has therefore no material rights in legislation, as he lacks in particular the authority to give or withhold his approval of laws enacted. He has no right according to the constitution to propose legislation, a rule that has been so constantly violated in practice, that jurists already speak of a right by usage to the contrary effect (Bornhak). Further, the Emperor has no independent power to issue decrees, and only exercises this power when

* Imperial Constitution, Art. 56.
† *Ibid.*, Art. 11, §§ 1 and 3.
‡ *Ibid.*, Art. 5.
§ *Ibid.*, Art. 16.
‖ *Ibid.*, Art. 17.

authorized by special provision of law. In all these matters the chief functions lie with the Bundesrath according to the public law of the Empire.

Yet here also the monarchical principle without legal provisions, and indeed contrary to them, has forced recognition inasmuch as the introductory formula of the laws of the Empire in complete agreement with the practice in Prussia reads: "We, William, by the grace of God, German Emperor, order with the consent of the Bundesrath and Reichstag what follows." Here again is a contradiction between formal jurisprudence and the force of facts.

VI.

By far the most important group of imperial rights are those which concern the army and navy, which form in fact the foundation stone of the Emperor's power. The Emperor has the constitutional duty to protect the territory of the Empire from foreign attack;* no other organ of government has the slightest co-operation, thus insuring the greatest possible rapidity in the formulation and execution of the Emperor's plans; in other cases consent of the Bundesrath is essential to a declaration of war.† The Emperor is charged with the "execution" ordered against a member of the federal state by the Bundesrath in case such member fails to fulfill its federal obligations.‡ The Emperor, moreover, calls together—subject to certain reservations as respects the smaller kingdoms—the members of the Bundesrath committees for the army and navy.§

But the Emperor is above all commander-in-chief of the Imperial army and navy in his own right without limitation in favor of the states, nor with any constitutional restriction through ministerial responsibility. The

* Imperial Constitution, Art. 11, § 2.
† *Ibid.*
‡ *Ibid.*, Art. 19.
§ *Ibid.*, Art. 8, § 2.

Emperor alone has the supreme command and is responsible to God alone.*

This proposition is absolute in time of war: at such time there is not a soldier in all the German states who is not exclusively under the supreme command of the Emperor who is not bound to complete and unlimited obedience to him, and who has not sworn such obedience to the colors. Prussians and Westphalians, Pomeranians and Rhinelanders, Brandenburgers and Silesians, Bavarians and Wurtembergers, Saxons and Hessians, Hamburgers and Badensians, Mecklenburgers and Thuringians: in war they are all the Emperor's, and no one on earth besides the Emperor has power over them. Not an atom of the power of the single states exists in face of unlimited supremacy of Emperor and Empire.

In times of peace, on the contrary, this absolute proposition of the supreme command of the Emperor has a single limitation as respects one member of the Empire, Bavaria. In theoretical literature there has been a lively contest whether the German army was in law one imperial army or the sum of the contingents of the states. Such a question is in reality purely academic. The German army is not under the command of the rulers of the twenty-five states which furnish contingents, but under the absolute and unlimited command of the Emperor, and this alone is decisive. The formation of the German army is in army corps, divisions, brigades and regiments, which with exception of garde regiment and the two Bavarian corps, are consecutively numbered. Juristically there are no contingents, but simply army corps. It is true indeed that the Saxons, the Wurtembergers, and in substance the Badensians, constitute army corps, Hessians a particular division, Oldenburgers and Mecklenburgers particular brigades, and thus further in smaller formations for the single states. But all this is without any significance, for the Emperor,

* Imperial Constitution, Art. 63, § 1; Art. 64, § 1; Art. 53, § 1.

both in peace and war, has the command over the Saxon as well as the East Prussian corps, over the Wurtemberg as well as the Brandenburg corps. According to the constitution of the Empire the Emperor is authorized to fix the garrisons for all German troops,* a right which he has indeed relinquished in so far as the military conventions assure the larger states that their subjects shall not be assigned to garrison duty outside their own boundaries.

Neither in peace nor in war has the sovereign of a state the command over German troops. For Bavaria, however, this holds only in time of war. In time of peace the Bavarian army is in the eyes of public law an independent part of the German army, over which the King of Bavaria and not the Emperor has the command. Yet Bavaria receives appropriations from the Empire for the support of its army, and is bound by the constitution to maintain its troops on the same basis as to number, equipment, armament and instruction as the rest of the German army, and the Emperor is authorized to inspect the Bavarian troops in exactly the same manner as the rest of the German army. In time of war the Bavarian troops are in every respect under the same rules as the other troops of the German army. The question, when does war begin? is answered as follows: with the command for mobilization of the troops. For all the troops except the Bavarian corps the command is given by the Emperor. For the Bavarian army it is issued by the Bavarian king, but the king *must* issue the command as soon as the Emperor has done so.† With this moment the Bavarian troops enter the supreme command of the Emperor, to whom they owe unconditional and unlimited obedience, in accordance with the oath which the Bavarians as well must take upon the colors to the Emperor.‡

* Imperial Constitution, Art. 63, § 1.
† Treaty of Versailles, III, § 5.
‡ *Ibid.*, IV.

VII.

From the preceding discussion it appears:

1. The German Emperor has the supreme and unlimited power of a monarch over the entire German army and navy, with the single qualification as respects the Bavarian troops which has been discussed.

2. The German Emperor has nearly the complete power of a monarch for the external affairs of the Empire with foreign states, he has the representation in international law of the German Empire in diplomatic and consular agents and the conclusion of treaties.

3. The German Emperor has the rights of a monarch toward the parliamentary representation of the German people, the Reichstag.

4. The German Emperor could under certain circumstances constitutionally suspend the operations of the Bundesrath.

5. He has monarchical power in the appointment of the executive organs of the Empire—the chancellor, the secretaries of state and the other imperial officials.

6. On the contrary, the Emperor has no monarchical power in the legislation of the Empire, for he lacks the right of approval and an independent right of issuing decrees. In the Bundesrath Prussia, with its seventeen votes, faces forty-one votes of other states; it can always be outvoted except in matters concerning army, navy, customs duties and indirect taxes.

The weakness of the imperial office in the internal affairs of the Empire has often been a source of vexation to Prussian particularism or patriotism. In the constituting parliament of 1867 the leader of the Progressive party, Waldeck, whom none could suspect of monarchical leanings, spoke severely and violently about it. In the acceptance of these conditions there was in fact an act of noble

self-renunciation of Prussia and the Hohenzollerns in favor of Germany.

The modern German Empire and the modern German Emperor can only be understood in the light of the historical events of which they are the culmination. Two centuries of unceasing and untiring labor on the part of Prussia; effort and privations of the Prussian people which at times seemed to reach the utmost limit of possible endurance; struggles and defeats and catastrophes of the state, a temporary straining of the forces of the people and ruler without a parallel; then good fortune, victory and triumph, diplomatic sagacity, military capacity and the enlightened economic policy of the Zollverein—all had to co-operate to bring about the final result of German history. This result followed the great historical reckoning of 1866; and after the exclusion of Austria the uplifting of the conquered of 1866 to the supporters of German greatness and strong national policy in the world. Prussian labor and effort finally brought it to pass that the German, even the subjects of the intermediate and small states, enjoys the powerful protection of the German Empire to the utmost bounds of the earth, and that no German, whether from Bavaria or Wurtemburg, whether from Reuss or Lippe, is exposed to forigen caprice abroad.

In this historical setting only can the Emperor and Empire be correctly understood as the conclusion of a stupendous historical labor on the part of Prussia. Without this labor the subjects of the intermediate and small German states would to-day be exposed as in the times of the old German Confederation, without protection to foreign insults, and these intermediate and small states themselves in consequence of their geographical position amidst great powers would inevitably perish in an international catastrophe.

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